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AO-95-24

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Re: (1) "Bundling" of campaign contributions by professional corporations or other business entities;
(2) use of campaign funds to pay for social club memberships; and
(3) use of the Internet for fundraising purposes.

Dear Mr. Kenney:

This letter is in response to your June 6, 1995 request for an advisory opinion regarding the three referenced issues, each of which I will address separately.

1. "Bundling" of campaign contributions by professional corporations or other business entities.

"Bundling" is the practice of gathering a number of contributions from different individuals and delivering the contributions to a candidate or candidate's political committee, or arranging for their delivery in a manner that identifies in writing who arranged for the making of the contributions. See M-95-05 and AO-95-06. Chapters 43 and 292 of the Acts of 1994 amended the campaign finance law to include new restrictions on bundling. See M.G.L. c. 55, s. 10A. Section 10A regulates bundling only if carried out by certain persons, who this office refers to as "regulated intermediaries."

Regulated intermediaries include (1) political action committees and their officers, employees or agents, (2) legislative agents, executive agents, and lobbying organizations and their officers, employees or agents acting on behalf of the agent or organization, and (3) persons responsible for delivering "pooled" contributions from officers or employees of a corporation. See M.G.L. c. 55, s. 10A(b)(1)-(3).

You have asked if the bundling restrictions would apply to persons directing or delivering "pooled" contributions from employees of:

(a) a professional corporation ("P.C.") established under M.G.L. c. 156A;

(b) a partnership;

(c) a sole proprietorship; or

(d) a joint venture.

I will address each situation separately.

(a) Bundling by employees of professional corporations organized under M.G.L. c. 156A.

You suggest that the term "corporation," as used in section 10A, refers only to business corporations established under M.G.L. c. 156B, but you acknowledge that the statute is not explicit on this point. You point out that in M-95-05, the office used the term "business corporation" when summarizing the bundling provisions.

The use of the term "business corporation" in M-95-05 was incorrect: section 10A regulates bundling by employees of all "corporations," including professional corporations and other types of corporations. Therefore, to the extent contributions are bundled by persons charged with the responsibility of directing or delivering "pooled" contributions from employees of a professional corporation, they are subject to M.G.L. c. 55, s. 10A.[1]

(b) Bundling by employees of a partnership.

Employment by a partnership which is not also a PC, standing alone, would not cause a person gathering contributions from other employees to be subject to section 10A. However, an employee of a partner or partnership which is a PC would be a "regulated intermediary" if the employee pools employee contributions. See AO-95-05 (a copy is enclosed, for information).

(c) Bundling by employees of a sole proprietorship.

The fact that a person is an employee of a sole proprietorship would not cause that person to be a "regulated intermediary" subject to section 10A.

(d) Bundling by employees of a joint venture.

Unless one or more of the joint venturers making up a joint venture is a corporation or otherwise subject to section 10A, persons directing or delivering "pooled" contributions of the venture's employees would not be considered "regulated intermediaries."

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[1] Moreover, M.G.L. c. 156A, s. 4(a) states that PCs are subject to all of the restrictions applicable to business corporations except where inconsistent with M.G.L. c. 156A. This office has consistently stated that professional corporations (PCs) are subject to the prohibition against certain contributions by "business corporations" contained in section 8 of M.G.L. c. 55. See IB-82-01.

2. Use of campaign funds to pay for social club memberships.

You have asked whether, and under what conditions, the chairman or other employee of a candidate's committee may seek reimbursement from the committee for social club memberships that are used for fundraising purposes.

A political committee organized in support of a candidate may make expenditures only if such expenditures "enhance the political future" of the candidate on whose behalf the committee was organized, and are not primarily for any person's personal use. See M.G.L. c. 55, sections 6 and 7. The statute does not specifically address expenditures made for membership in clubs or other organizations.

The office has issued regulations which allow certain candidates to use campaign funds to pay for memberships in clubs or other organizations "provided that the candidate would not be participating in the particular organization or association but for his interest in it enhancing his political stature."[2] Although the regulations do not explicitly allow campaign funds to be used to pay for the membership of officers or employees of political committees in organizations or associations, the regulations contemplate expenditures which are similar to the listed permissible expenditures provided such expenditures are not inconsistent with the campaign finance law. See 970 CMR 2.06(3) and 270 CMR 2.05(2).

Campaign funds may not be used to pay a membership fee if such payment is primarily to personally benefit the officer or employee. However, if an officer or employee of a political committee would not be a member of a particular club or organization but for the person's participation or employment in the political committee, and if the expenditure is made primarily to benefit the candidate's political future, such expenditure would be consistent with the campaign finance law.[3] For example, if an officer or employee was a member of a social club before becoming active in a political campaign, campaign funds could not be used to pay the membership fee.

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[2] The regulation also states that it "shall not be construed to permit the payment of memberships in professional organizations other than those specifically designed for political candidates." See 970 CMR 2.06(3)(c).

[3] Section 6 provides for different standards for determining whether a candidate's political committee may make an expenditure depending on the office a candidate may be seeking. In my opinion, however, the proposed expenditure could meet either standard. See M.G.L. c. 55, s. 6 and advisory opinions AO-91-23 and AO-91-26 (the word "necessary" in the context of s. 6 means "reasonably useful and proper").

This office closely reviews expenditures of this type to ensure that they comply with the campaign finance law.

3. Use of the Internet for fundraising purposes.

You have asked whether, and to what extent, a candidate's committee may use the Internet for fundraising purposes. Fundraising by Internet raises questions relating to both solicitation and receipt of contributions by electronic means. See FEC AO-1995-9.

a. Soliciting contributions.

The campaign finance law does not prohibit candidate committees from soliciting contributions through the use of a computer network. Political committees may subscribe to an on-line service, but must pay the cost of the subscription and associated use at the market rate for such services.[4] Candidates and committees should be certain to avoid the potential receipt of in-kind corporate contributions through such means as the use of a corporation's computer or by solicitation through a corporation's on-line account. Any solicitation made on the network should state that contributors must provide, with each contribution made, the contributor's name and residential address, and if more than $200 is contributed by any individual during a calendar year, the contributor's occupation and employer. In addition, contributions exceeding $50 in a calendar year must be made by personal check (see discussion, below).

b. Receipt of contributions.

The campaign finance law, as currently enacted, allows political committees to receive contributions by means other than personal check only if the total contribution by any individual during a calendar year does not exceed $50. See OCPF AO-95-09 and M.G.L. c. 55, s. 9. Section 9 states that a candidate's committee may not accept a person's contribution if the total amount contributed exceeds $50 in a calendar year unless the contribution is made by check on which the contributor is directly liable, such as a personal check (a copy of OCPF AO-95-09 is enclosed, for information). In contrast, federal law allows contributions to be received by electronic transfer. See FEC AO-1995-9.

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[4] So-called depository candidates and committees should not make such expenditures by wire transfer, and non-depository candidates or committees should not make an expenditure by wire transfer for any amount exceeding $50. See AO-95-22 (a copy is enclosed, for information) and M.G.L. c. 55, s. 9, which states that "[n]o individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, shall make an expenditure for an amount exceeding fifty dollars except by check."

As noted in OCPF AO-95-09, this office recognizes that electronic transfers are increasingly commonplace and that perhaps the campaign finance law should be amended to allow such transfers. As I stated in that opinion, I would not object to legislative initiatives to amend the Massachusetts campaign finance law if safeguards are built into the electronic transfer process, e.g., assurances that required information is provided by contributors.

To the extent contributions do not exceed $50 from a contributor during a calendar year, such contributions may be received by wire transfer if all information required by c. 55 is provided by contributors and maintained by the committee receiving the contributions. In particular, the committee must ensure that it maintains records reflecting: (1) the name and address of each contributor; (2) the amount of each contribution; and (3) a copy of the signed authorization card for each contributor.

This opinion is solely in the context of M.G.L. c. 55 and is based only on the representations made in your letter. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,

Michael J. Sullivan
Director

MJS/cp
Enclosures